

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CHARLES EVANS III,

Plaintiff,

vs.

NEBRASKA BEEF, LTD.,

Defendant.

8:12CV161

MEMORANDUM AND ORDER

This matter is before the court on the plaintiff's "notice of appeal and in forma pauperis request," Filing No. [38](#), which the court will construe a statement of objections to the Findings and Recommendations ("F&R") of the magistrate judge, Filing No. [28](#), on the defendant's motion to strike and/or dismiss, Filing No. [21](#). The plaintiff also requests a hearing on the motion, Filing No. [33](#). The plaintiff has also filed a motion for default judgment, Filing No. [40](#).

The court first finds that the motion for default judgment should be denied because the defendant is not in default. Under the federal rules, the defendant has 14 days from the date of notice of the disposition of a Rule 12 motion in which to file an answer or responsive pleading. [Fed. R. Civ. P. 12\(a\)\(4\)\(A\)](#). Also, the plaintiff need not pay any filing fee in connection with a statement of objections and the in forma pauperis request will be denied as moot.

In his largely unintelligible statement of objections to the F&R, the plaintiff, *pro se*, asserts that "no 2014 March trial needed when Cortez supra extant 8:08cv90 on this court's docket which is defendant now denying." Filing No. [38](#). Under [Fed. R. Civ. P. 72\(b\)\(2\)](#), a district court reviews de novo those portions of a magistrate judge's order

that are objected to by a party. *Grinder v. Gammon*, 73 F.3d 793, 792 (8th Cir. 1996). “A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge” or may “receive further evidence or recommit the matter to the magistrate judge with instructions.” 28 U.S.C. § 636(b)(1).

In its F&R, the magistrate judge recommended dismissal of the plaintiff’s purported RICO conspiracy claims and also recommended that certain allegations be stricken from the plaintiff’s second amended complaint. On de novo review, the court finds the plaintiff’s objection should be denied and the magistrate judge’s recommendation should be adopted in all respects. The court agrees with the magistrate judge’s finding that the allegations of the plaintiff’s second amended complaint do not state a claim for RICO violations. Filing No. [38](#), F&R at 7. The court further agrees that the plaintiff’s RICO-related statements, his request for referral to the United States Attorney and his class-action references are improper and should be stricken. The plaintiff’s arguable assertion that the *Cortez* case is somehow dispositive of his claims is without merit. That action involves the settlement of three consolidated class and collective actions against Nebraska Beef, Inc., for alleged FLSA violations. See *Fermin Cortez v. Nebraska Beef, Inc.*, Nos. 8:08cv90, 8:08cv99, 8:10cv208, Filing No. 394, Order Approving Settlement. The court also finds no hearing on the motion is necessary. Accordingly,

IT IS ORDERED:

1. The plaintiff’s objection (Filing No. [38](#)) to the magistrate judge’s findings and recommendations (Filing No. [28](#)) is denied.
2. The plaintiff’s in forma pauperis request is denied as moot.

3. The findings and recommendations of the magistrate judge (Filing No. [28](#)) are adopted in all respects.

4. The defendant's motion to dismiss and/or strike (Filing No. [21](#)) is granted as follows:

- (a) The plaintiff's claims based on RICO or discrimination, to the extent they were alleged, are dismissed.
- (b) The plaintiff's statements referencing "class members" or multiple plaintiffs, discriminatory actions by the defendant, a RICO violation and associated requests for a referral to the U.S. Attorney, and request that he be referred to as "POE-Boy" are deemed stricken from the Second Amended Complaint.
- (c) The plaintiff need not file another amended complaint; the court and parties shall proceed as if the statements were removed from the pleading.

5. The plaintiff's motion for a hearing (Filing No. [33](#)) is denied.

6. The plaintiff's motion for default judgment (Filing No. [40](#)) is denied.

DATED this 20th day of August, 2013.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge